

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

August 29, 2013 at 9:30 a.m.

1. [12-39515](#)-E-11 WATSON COMPANIES, INC. MOTION FOR RELIEF FROM
CND-1 W. Steven Shumway AUTOMATIC STAY
7-31-13 [[106](#)]
J.B. OLSEN CONSTRUCTION,
INC. VS.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on July 31, 2013, but no service list is attached to the proof of service. Dckt. 111. The court is unable to discern whether proper service or notice has been provided. 28 days' notice is required.

Tentative Ruling: The Motion for Relief from Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is to deny the Motion for Relief from Automatic Stay. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

J.B. Olsen Construction, Inc. ("Movant") seeks relief from the automatic stay as to Watson Companies, Inc. With respect to a pending lawsuit in a non-bankruptcy forum entitled *Marquez Brothers Properties v. J.B. Olsen Construction, Inc.*, Case No. 34-2009-00058967 in Sacramento Superior Court.

However, no service list is attached to the proof of service. Dckt. 111. The court is unable to discern whether proper service or notice has been provided. If counsel is able to provide proof of service at the hearing, the court will make the alternative tentative ruling:

Movant states cause exists for relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) to proceed with the non-bankruptcy action to final judgment because:

1. The claim is insured and Movant seeks recovery from the insurance, if any, and waives any deficiency or other claim against the Debtor or estate property;
2. The Debtor-in-Possession has signed a Stipulation for Relief from the Automatic Stay, indicating the property sought is not necessary to an effective reorganization; and
3. The claims at issue arise under non-bankruptcy law and can be most expeditiously resolved in a non-bankruptcy forum.

DISCUSSION

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The basis for such relief when there is pending litigation in another forum is predicated on factors of judicial economy including whether the suit involves multiple parties or is ready for trial. See *Packerland Packing Co., Inc. v. Griffith Brokerage Co. (In re S. Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Santa Clara County Fair Ass'n, Inc. v. Sanders (In re Santa Clara County Fair Ass'n, Inc.)*, 180 B.R. 564 (9th Cir. BAP 1995); *Truebro, Inc. v. Plumberex Specialty Products, Inc. (In re Plumberex Specialty Products, Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

The court finds that the nature of the Sacramento Superior Court case warrants relief from stay for cause. First, the non-bankruptcy action involves multiple non-debtor parties who are not subject to the instant matter in this bankruptcy court. Additionally, the claims in the non-bankruptcy forum are insured and Movant only seeks recovery from the insurance and waives any deficiency against the bankruptcy estate. Debtor has also signed a stipulation agreeing to relief from the automatic stay.

The court shall issue a minute order modifying the automatic stay as it applies to the Debtors to allow the J.B. Olsen Construction, Inc. to pending lawsuit in a non-bankruptcy forum entitled *Marquez Brothers continue Properties v. J.B. Olsen Construction, Inc.*, Case No. 34-2009-00058967 in Sacramento Superior Court.

The automatic stay is not modified with respect to the enforcement of the judgment against the Debtors, Trustee, or property of the bankruptcy estate. Any judgment obtained shall be brought back to this court for the proper treatment of any claims under the Bankruptcy Code.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are modified to allow J.B. Olsen Construction, Inc., its agents, representatives, and successors, and any other beneficiary or trustee, and their respective agents and successors to continue pending lawsuit in a non-bankruptcy forum entitled Marquez Brothers Properties v. J.B. Olsen Construction, Inc., Case No. 34-2009-00058967 in Sacramento Superior Court and obtain a final judgment therein and in any appeal therefrom.

IT IS FURTHER ORDERED that the automatic stay is not modified with respect to the enforcement of the judgment against the Debtors, Trustee, or property of the bankruptcy estate. Any judgment obtained shall be brought back to this court for the proper treatment of any claims under the Bankruptcy Code.

No other or additional relief is granted.

2. 13-90643-E-12 GARY/CHRISTINE TAYLOR MOTION FOR RELIEF FROM
 SW-1 Anthony Johnston AUTOMATIC STAY
 8-12-13 [[88](#)]

 WELLS FARGO BANK, N.A. VS.

**THE COURT ISSUED THIS AS A TENTATIVE RULING TO ALLOW
THE PARTIES TO PRESENT A STIPULATION TO THE COURT**

**NO APPEARANCE AT THE AUGUST 29, 2013 HEARING REQUIRED
FOR THE MOTION TO BE CONTINUED TO SEPTEMBER 5, 2013**

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 12 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 12, 2013. By the court's calculation, 17 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to continue the hearing on the Motion for Relief from the Automatic Stay to 10:00 a.m. on September 5, 2013 in the Modesto Division. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Wells Fargo Bank, N.A. seeks relief from the automatic stay with respect to an asset identified as a 2006 Travel Supreme Select, VIN ending in 54265.

However, the Notice of Hearing states the hearing will be held at 9:30 a.m. in Modesto, California. This Chapter 11 case is a Modesto Division case. As the Notice provides the hearing will be heard in Modesto, the court continues the hearing to be heard on 10:00 a.m. on September 5, 2013 in Modesto.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the hearing on the Motion for Relief is continued to 10:00 a.m. on September 5, 2013 in the Modesto Division.

IT IS FURTHER ORDERED that written opposition to the Motion, if any, shall be filed and served on or before September 2, 2013.

3. [12-35747](#)-E-7 LILYA RAKHUBA
GR-1 Oxana Koslov

OPPOSITION RE: TRUSTEE'S MOTION
TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341 (A) MEETING
OF CREDITORS
7-11-13 [[147](#)]

Notice Provided: The Notice of Hearing and Opposition on Trustee's Motion to Dismiss was served on Debtor, Counsel for Debtor, Chapter 7 Trustee and the Office of the U.S. Trustee on July 11, 2013. 49 days notice of the hearing was provided.

Trustee filed a Motion to Dismiss for Failure to Appear at section 341(a) Meeting of Creditors due to Debtor and Counsel's failure to appear.

Debtor filed opposition to the Motion to Dismiss on the grounds that Debtor never received the 341 meeting notice. Prior to conversion, the Debtor filed a notice of change of address, but the notice went to the old address. The Debtor states she will appear at the continued meeting to be held on September 3, 2013.

Based on the foregoing, the Motion to dismiss is continued to September 18, 2013.

4. [12-23074-E-7](#) BRYAN/LISA GILMORE
RCO-1 David Foyil

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
7-30-13 [[137](#)]

OCWEN LOAN SERVICING, LLC
VS.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 7 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 30, 2013. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted. No appearance required.

Ocwen Loan Servicing, LLC seeks relief from the automatic stay with respect to the real property commonly known as 14555 Ridge Road, Sutter Creek, California. The moving party has provided the Declaration of Kathy Santin to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Santin Declaration states that the Debtor has not made 21 post-petition payments, with a total of \$43,014.51 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$266,382.43, secured by movant's first trust deed, as stated in the Santin Declaration, while the value of the property is determined to be \$99,900.00, as stated in Schedules A and D filed by Debtor.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay

since the debtor has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The Debtor was granted a discharge on July 16, 2013. Granting of a discharge to an individual under Chapter 7 lifts the automatic stay by operation of law. See 11 U.S.C. § 362(c)(2)(C). There being no automatic stay, the motion is denied as moot as to the Debtor. The Motion is granted as to the Estate.

The court shall issue a minute order terminating and vacating the automatic stay to allow Ocwen Loan Servicing, LLC, and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

Because the moving party has established that there is no equity in the property for the Debtor and no value in excess of the amount of the creditor's claims as of the commencement of this case, the moving party is not awarded attorneys' fees for all matters relating to this Motion.

The moving party has not pleaded adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Ocwen Loan Servicing, LLC, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary

or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 14555 Ridge Road, Sutter Creek, California.

IT IS FURTHER ORDERED that to the extent the Motion seeks relief from the automatic stay as to the debtor, who was granted a discharge in this case, it is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C).

No other or additional relief is granted.